

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DANELL SMITH,

Petitioner,

Criminal No. 00-80762

Civil No. 04-70961

v.

UNITED STATES OF AMERICA,

Hon. John Corbett O'Meara

Respondent.

**ORDER DENYING MOTION TO SCHEDULE EVIDENTIARY
HEARING AND FOR APPOINTMENT OF COUNSEL
AND SETTING BRIEFING SCHEDULE**

Before the court is Petitioner's motion to schedule evidentiary hearing and for appointment of counsel, filed April 30, 2007. The government has not submitted a response.

On October 30, 2006, the Sixth Circuit issued an order reversing this court's decision to dismiss Petitioner's ineffective assistance of counsel claim as procedurally barred. The court remanded the case so that this court can consider the merits of Petitioner's claim that trial counsel rendered ineffective assistance by not informing him of the details of a plea bargain or advising him whether to accept it. The mandate was issued December 5, 2006.

Petitioner now requests an evidentiary hearing, contending that his ineffective assistance of counsel claim "alleges factual events outside the record of this case." The record is not sufficiently developed so as to allow the court to determine whether an evidentiary hearing is necessary in this case. Therefore, the parties shall brief this matter as follows:

Petitioner shall submit a memorandum detailing the factual basis of his ineffective assistance of counsel claim by **August 10, 2007**.

The government shall submit a response brief by **August 24, 2007**. Petitioner may

submit a reply brief, if any, by **September 7, 2007**.

SO ORDERED.

IT IS FURTHER ORDERED that Petitioner's motion to schedule evidentiary hearing and for appointment of counsel is DENIED WITHOUT PREJUDICE.

s/John Corbett O'Meara
United States District Judge

Dated: July 10, 2007

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, July 11, 2007, by electronic and/or ordinary mail.

s/William Barkholz
Case Manager